

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHRISTA McAULIFFE INTERMEDIATE SCHOOL
PTO, Inc. et al,

DECLARATION
18 CV 11657 (ER)(OTW)

Plaintiffs,

-against-

BILL DE BLASIO, in his official capacity as Mayor of
New York, et ano.,

Defendants.
----- X

NADIYA CHADHA, declares under the penalty of perjury, pursuant to 28
U.S.C. § 1746, that the following is true and correct:

1. I am the Director of Research and Policy in the Office of Student Enrollment (“OSE”) of the New York City Department of Education (the “DOE”). My responsibilities include conducting research and data analysis to support and inform the policymaking process as it relates to enrollment and admissions in DOE schools and supporting the overall admissions process for 3K, Pre-K, Kindergarten, middle school and high school through analysis, reporting, and policymaking. I have held this position since July 2015. I have a Bachelor of Arts degree in Economics from Boston College and Master of Public Administration degree from Columbia University.

2. I submit this Declaration in support of Defendants' opposition to Plaintiffs' motion for a preliminary injunction. Its content is based on my personal knowledge, the books and records of DOE and discussions with other DOE employees.

Admission to the Specialized High Schools and the Discovery Program

a. Offers Based on Score on the Specialized High School Admissions Test ("SHSAT")

3. An overview of the process of how students apply to take the SHSAT, the procedures at the test sites, the contents of the test, how the test is scored and the Discovery Program are found in the 2018-2019 Specialized High Schools Student Handbook, which is published by DOE and is available at <https://www.schools.nyc.gov/docs/default-source/default-document-library/specialized-high-schools-student-handbook>.

4. Before the test, students and their families are advised to carefully consider and decide which of the eight testing Specialized High Schools they want to attend and their order of preference. On the test date, students must complete a grid on the answer sheet in which they list their school choices in order of preference. Every student must provide at least one school choice and may provide as many as eight school choices.

5. In accordance with State law, after the test scores are compiled, the scores of all students who took the test are rank-ordered from highest to lowest score.

6. The student with the highest score is placed in her first choice school. The student with the next highest score is then placed in her first choice school. Each student in turn, in order of score, is placed in that student's first choice school as long as there are available seats in that school. If all the seats in a student's first choice school have been filled through this process, then the student is placed in her second choice school, provided there are seats available.

If not, the student is offered a seat in her third choice school if seats are still available, and so on. The process continues until all seats at the eight Specialized High Schools have been filled.

7. Based on prior experience, not all students accept the offers they receive. In September 2019, there will be approximately 4,000 seats available through this process in the eight Specialized High Schools. Accordingly, based on past experience, DOE will make approximately 4,800 offers to fill these seats.

b. Offers for the Discovery Program

8. The process of making offers for the Discovery Program, through which students can also gain admission to the Specialized High Schools, is significantly different, because of legal and practical constraints. Admission to the Discovery Program is also governed by State law. Students must take the SHSAT and score below the cut-off score of those admitted based solely on the SHSAT score. Once the offers based solely on the SHSAT score are determined, the cut-off score is known. The SHSAT score list is then reviewed, and students who are clearly ineligible for the Discovery Program are eliminated. This year, those are the students who do not attend a public school with an Economic Needs Index (“ENI”) of 60% or above.

9. An estimated score range is then established, encompassing far more than enough students, taken in rank order, who may be eligible for and interested in taking the Discovery Program. The score range will depend on the number of seats available through the Discovery Program and the other factors discussed below. For the September 2019 entering class, there are currently a total of 528 seats in the Specialized High Schools reserved for

students who enter through the Discovery Program.¹ It is estimated that to fill these seats, 1,000 to 1,500 students and their schools will need to be contacted to determine whether the students are eligible and interested. (The exact number of students has not yet been determined.)

10. Pursuant to State law, to be eligible for the Discovery Program, the student must be disadvantaged, must be recommended by her current school as having high potential for the Specialized High School program and must take an intensive preparatory summer school program. Upon successful completion of the summer school program the student is admitted to a Specialized High School.

11. For the summer 2019 Discovery Program, the new criteria for determining which students are disadvantaged are being used. The student must attend a school with an ENI of .60 or above, and satisfy one of the following criteria: 1) the student's family income qualifies the student for free lunch or reduced price lunch based on the student's meal form; 2) the student's family receives assistance from the NYC Human Resources Administration (welfare or SNAP benefits); 3) the student is in foster care, a ward of the state, or is a Student in Temporary Housing as defined by McKinney-Vento or 4) the student is an English Language Learner or was an English Language Learner within the previous 2 school years, and enrolled in a DOE school for the first time within the last four years.

¹ In the 2018-2019 Discovery Program there were 252 participants. The 528 seats allocated for the upcoming 2019-2020 Discovery Program constitutes approximately 13% of the available seats in the Specialized High Schools. It is planned that the 2020-2021 Discovery Program will have approximately 800 seats, which is 20% of the available seats in the Specialized High Schools.

12. For the summer 2019 Discovery Program, the planned procedure is that we are planning to either send a letter or call the potentially eligible students and inform them that they may be eligible for the Discovery Program, through which they can gain entry into a Specialized High School, and that if they meet the other eligibility criteria, they will be required to go to the preparatory summer school program. They will be asked to respond by letter stating whether they are interested in participating in the Discovery Program. If the students' records do not show whether they are disadvantaged, they will also be asked to submit documentation establishing that they meet one of the disadvantaged criteria. The students' current schools will subsequently be asked to provide a letter stating whether the student is recommended as having high potential for the Specialized High School program.

13. Once DOE receives the responses, both as to whether students are interested in participating in the Discovery Program, and if so, whether they meet the other eligibility criteria, DOE can prepare a list of students to whom offers can be made, based on the students' scores on the SHSAT and their school choices. State law also requires offers for the Discovery Program to be made in rank order based on each student's score on the exam.

14. Thus, once a list of eligible and interested students is established, offers for the Discovery Program are made based on the students' rank-ordered scores and their school choices. This works in the same manner as for students who are given offers based solely on their SHSAT score.

15. However, as can be seen from the above, not everyone who is eligible for the Discovery Program receives an offer for the Program. Some students who are not interested in participating do not submit the documentation establishing that they are disadvantaged, even though they may satisfy the criteria. A significant number of students who are eligible respond

that they are not interested in the Discovery Program and accordingly are given no offer to participate in the Program.

16. Accordingly, it is not possible to know with precision the population of students who are eligible for the Discovery Program in any given year. Nor will it be possible to know who will be made an offer to participate in the Discovery Program until late April or May 2019, after the student expressions of interest and the verification of eligibility requirements have been received. DOE plans to provide Discovery Program offers in May 2019.

Data Concerning the Changes for the Discovery Program

a. Modeling the Effects of the Changes that were Subsequently Adopted

17. In April 2018, a group of decision makers at DOE were considering whether revisions could be made in the admission procedure for the Specialized High Schools that could result in greater racial/ethnic, geographic and socioeconomic diversity in the student bodies of these schools.

18. The Hecht Calandra Act does not limit the size of the Discovery Program, and does not define the eligibility requirement that a student be “disadvantaged.” Accordingly, I was asked to model the possible results of expanding the Discovery Program to 20% of the seats at the Specialized High Schools, and of revising the criteria for the disadvantaged eligibility requirement.

19. Estimates that I produced, using the proposed changes that were later adopted, are contained in a chart which is annexed hereto as Exhibit “1.” I used the data for students that had taken the SHSAT for admission to the Specialized High Schools in September 2017. The first row of the chart shows the actual number of students who received offers to a

Specialized High School based solely on their SHSAT score. The second row shows the actual total of those students and the number of students who participated in the summer 2017 Discovery Program.

20. These totals are then broken down by race/ethnicity, and provided in percentages. The column headed “Other” refers to students who are multiple race categories not represented.² I then modeled how these actual numbers would have changed if the Discovery Program was expanded to 20% of the seats and the criteria for “disadvantaged” included a requirement that the student attend a school with an of ENI of 60% or above. The resulting estimated numbers are in the third row of the chart.

21. These estimates show a decrease of 2.9% points for Asian-American students, as a percentage of the total student population, a decrease of 2.5% points for White students and a decrease of 1.2% points for the group of “Other” students. The estimates show an increase of 2.4% points for Black students and 3.48% points for Hispanic students. It should be emphasized, that as described above, there are many variables that affect who receives an offer to the Discovery Program. Accordingly, these figures are estimates and the actual result may be different.

22. In April 2018 I provided the data in Exhibit “1” to the DOE decision makers who were considering revisions to the Discovery Program. The modeled changes in Chart “1” were incorporated in the new plan announced by the Mayor and the Chancellor on June 3, 2018. However, the 20% expansion of the Discovery Program is being rolled out over two years. For the 2019-2020 school year, the expansion will be approximately 13% and then will rise to 20% in the following year.

² This category represents students who do not report their race, as well as students reported as Native American or Multi-Racial.

b. Offers by Middle School

23. In addition to the modeling data, I analyzed data about the number of students who received offers based on their SHSAT score, and the number of participants in the Discovery Program, broken down by the middle school attended by the students. This actual data is for the students who entered a Specialized High School in September 2017 and the chart is at Exhibit “2.”

24. The data shows that of the 648 public middle schools in New York City (which includes charter schools), there were 338 schools that had zero students who received a SHSAT offer to a Specialized High School and only 11 of these schools had any participants in the Discovery Program.

25. Of the 648 public middle schools, 96 schools had only 1 student receive a SHSAT offer and of these schools, only 5 had a single participant in the Discovery Program.

26. Thus, the students in 50.5% of the schools, over half of the public middle schools in New York City, received no offers to a Specialized High School, and in 15.6% of all public middle schools, only one student received an offer.

27. Looked at another way, this means that 428 out of the 648 middle schools in New York City had zero or one student receive an offer to a Specialized High School for Fall 2017. At all 428 of these middle schools combined – which comprise approximately two-thirds of all NYC middle schools (66%) – just 101 students—received an offer to a Specialized High School.

28. By comparison, *each* of the 8 middle schools that had the largest number of offers to Specialized High Schools had over 100 students who received offers. The number of offers to students in each of these schools varied between 268 and 108 students.

29. The data also shows that 50% of offers to a Specialized High School were made to students at only 30 (or 4.6%) of all public middle schools in New York City, none of which were in the Bronx. Of the 161 public intermediate schools in the Bronx, only 45 – less than 30% - had students that received an admission offer for fall 2017 to the Specialized High Schools based upon individual SHSAT scores. Of the remaining 116 Bronx intermediate schools that had no students receiving offers based on SHSAT scores, only 4 - approximately 3% - had students that received offers through the Discovery Program.

c. Asian-American Students who Attend a School with an ENI of 60% or Above

30. I also was asked to provide actual data for purposes of this litigation, showing the rate of participation and rate of success in the Specialized High School admission process of Asian-American students who attend schools with an ENI of 60% or above. The charts that show this data are annexed at Exhibit “3” as 3A, 3B and 3C.³

³ Since the purpose of the tables in Exhibit “3” is to contrast high ENI and low ENI middle schools, students attending private schools – for which DOE does not calculate an ENI – are treated as a separate category. The data in the Exhibit “3” tables therefore differs in minor ways from the data in Exhibit “1”, as Exhibit “1” incorporates information about the race of private school students to the extent that this information is available to DOE.

31. Chart 3A shows the data for students who were offered admission to a Specialized High School for September 2018, based on their score on the SHSAT. The data shows the number of students who attended a school with an ENI of 60% or above, the number of students who attended a school with an ENI of less than 60%, and the number of students for whom there is no ENI available.⁴ These totals are then broken down by race/ethnicity. The row headed “other” refers to students who are students of multiple race categories that are not represented and the row headed “private school attendees” refers to students who attend private schools. Chart 3A shows that offers were made to 1,511 students from schools with an ENI of 60% or greater, and of these, 1,060 students (or 70.2 %) were Asian-American.

32. Chart 3B shows the same data for the prior year, students who were offered admission to a Specialized High School for September 2017. The data for Asian-Americans is very similar. Offers were made to 1,540 students from schools with an ENI of 60% or greater, and of these, 1,075 students, or 69.8 %, were Asian-American.

33. Finally, Chart 3C shows the data for test takers -- those who took the SHSAT for admission to the Specialized High Schools in September 2018. The data shows that of the 16,107 students who took the exam and attend schools with an ENI of 60% or above: 4,974, or 30.9 % were Asian-American; 4,361, or 27.1% were African-American; 5,001 or 31% were Hispanic; 1,475 or 9.2% were White; and 296 or 1.8% were “Other.” Chart 3A and Chart 3C, when read together, show that African-American and Hispanic students accounted for approximately 41% of SHSAT test-takers, yet only received approximately 9% of offers to Specialized High Schools.

⁴ No ENI data is available for students who attend a private school or do not attend a DOE district school or a charter school, due to being homeschooled, hospitalized, etc.

Timeline and Process of Determining Specialized High School Offers

34. Offers of admission to the Specialized High Schools must be prepared for mailing at the same time as all First Round offers of admission made to the approximately 80,000 students seeking admission to a New York City public high school.

35. There are 427 high schools operated by DOE that utilize DOE's centralized admissions process, and some high schools offer multiple programs. In total, there are approximately 800 schools and programs to which students can apply. Each student may apply to as many as 12 schools or programs in non-specialized high schools, listing them in order of preference. DOE mails the first round of offers of admission to all high schools, including the Specialized High Schools, at the same time.

36. In the fall of 2018, more than 29,000 students took the SHSAT for admission in September 2019. DOE's test vendor, Pearson, the company that develops the SHSAT, scanned the completed tests and delivered a file with each student's score and list of Specialized High School preferences to DOE on January 4, 2019.

37. It should be noted that in connection with this litigation, I was asked to review the exam score of the child of a Plaintiff in this lawsuit, on whose behalf the Plaintiff is suing. Given the child's score on the exam, she is very likely not affected by the Discovery Program.

38. DOE is still in the process of determining the cut-off scores for each Specialized High School. According to the original schedule, DOE would provide cut-off score information to Pearson this week together with the student identification numbers. Pearson would then run the data to match students and schools and perform spot checks to verify accuracy, a process that takes approximately 8 business days.

39. Pearson next gives DOE the offer information for the students who took the SHSAT. DOE will then analyze the data for those students who scored just below the cut-off score, to identify which students may be eligible for the Discovery Program. As explained above, students who scored below the cut-off on the SHSAT but who may be eligible for the Discovery Program will be so informed and asked to provide information about (i) their interest in the Discovery Program and (ii) in some cases, their economic or linguistic need.

40. As for admission to all other high schools, DOE applies algorithms to the application choices of all 80,000 students; these algorithms are designed to provide each student with his or her highest possible preferred school. Each student is offered admission to one non-specialized high school. Students whose score on the SHSAT exceeds the cut-off for one of their chosen Specialized High Schools will receive offers for two schools: one Specialized High School and one non-specialized high school.⁵

41. DOE was scheduled to finalize and transmit the content of the approximately 80,000 high school offer letters to outside vendors for printing and mailing by February 11, 2019. Pursuant to contract, these vendors have three weeks to complete the printing and mailing process for all offer letters. These offer letters were originally scheduled to be mailed to all 80,000 high school student applicants on March 4, 2019.

42. If the Court were to grant a preliminary injunction, however, the cut-off score DOE developed for each Specialized High School would need to be recalibrated—and those cut-off scores directly impact which students will receive an offer (if any) to a particular Specialized High School. DOE would have to consult again with the eight Specialized High

⁵ There is one exception to these rules. If a student has applied and been accepted for one or more studios at the Fiorello H. LaGuardia High School of Music and Art & the Performing Arts, those offers will be listed on the offer letter in addition to any other offer(s).

School principals to set new seat targets for the Discovery Program at each Specialized High School and then recalibrate the cut-off score for each school based on those targets. The revised data would then have to be sent back to Pearson for verification, re-run through DOE's computer systems to generate new offer letters, and finally sent to the outside vendors to print and mail the letters within the contracted three weeks.

43. A decision was made by officials at DOE, that considering the compressed period in which primarily OSE must complete this complicated Specialized High School offer process; complete the Discovery Program eligibility review; complete the general high school offer process for all 80,000 applications; prepare responses in this litigation; and attempt to provide the Court with sufficient time to rule on the instant motion, it was necessary for DOE to push back the admissions timeline just described to allow for the latest feasible date to mail offer letters: March 18, 2019. To meet that deadline, DOE must provide finalized information to the outside vendors for printing and mailing by February 25, 2019.

44. The New York City high school application process is stressful for students and their families. DOE is mindful that a delay in the mailing of high school offers will increase anxiety for students and families, cause complications for those students considering private school offers, and require Specialized High Schools to reschedule and re-staff Open Houses that have already been planned for the second week in March 2019. Additionally, the School Fair has already been planned for the weekend of March 23 and 24, 2019, where representatives of high schools that still have open seats are available to speak with students and their families who are considering applying in Round 2 of the high school application process. Applications for Round 2 are due by March 29, 2019.

Service of Papers Just Before Winter Recess

45. Finally, I have been advised by counsel that the papers in this lawsuit were served on Thursday, December 20, 2018. The DOE's winter recess began on Monday, December 24, 2018 and continued through January 1, 2019. During this period all schools are closed.

46. While the DOE's main office where I work was not officially closed that entire period (the office was open between December 26 and December 28), I, like most staff in QSE and at the main office, had a preplanned vacation arranged for the winter recess period. I returned to work, as did most of my colleagues, on January 2, 2019.

Dated: New York, New York
January 17, 2019



NADIYA CHADHA